

Application No.: 10/024,143
Amdt. Dated: November 10, 2005
Reply to Office Action Dated: September 12, 2005

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REMARKS

Claims 1-23 were pending in the present application. Claims 2, 3, and 23 have been cancelled without prejudice to or disclaimer of the subject matter contained therein. Claims 1 and 4-22 are now pending.

Election in Response to Restriction Requirement

In complete response to the Restriction Requirement mailed September 12, 2005, Applicants elect Group I, claims 1-2 (part), 3(part), 4-7 and 23 (part), with traverse. Claims 2-3 and 23 have been cancelled without prejudice.

The Restriction requirement required restriction to one of the following inventions under 35 U.S.C. § 121:

I. Claims 1-2 (part), 3 (part), 4-7 and 23 (part), drawn to a composition comprising a chemical structure wherein R'X is an amino acid residue;

II. Claims 1-2 (part), 3 (part), 8 (part) and 9-12, 23 (part) drawn to a composition comprising a chemical moiety wherein R'X is a payload which is a therapeutic agent;

III. Claims 1-2 (part), 3 (part), and 13-16, 23 (part) drawn to a composition comprising a chemical moiety wherein the structure R'X is a payload which is an imaging agent;

IV. Claims 1-2 (part), 3 (part), and 17-22, 23 (part) drawn to a composition comprising a chemical moiety wherein structure R'X is a payload which is a targeting moiety.

Under the statute, an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct. However, if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. *MPEP* § 803.

Each of Groups I-IV requires a search of the structure defined in claim 1. As detailed in the restriction requirement, the search will be in overlapping subclasses. Since the search for the subject matter of each of Groups I-IV will overlap, the search and examination of all of these claims can be made without serious burden. In such a case, the examiner must examine it on the merits. Therefore, Applicants respectfully request that the restriction requirement be withdrawn.

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Election in Response to Species Election Requirement

According to the restriction requirement, in the event applicant elects any of the four groups, an election of species is required. The species election required election of species from each of claims 1-3 and 23. Claims 2-3 and 23 have been cancelled without prejudice. Therefore, election of species for these claims is moot and Applicants respectfully submit that a complete response is presented without election of species for these cancelled claims.

As to claim 1, Applicants elect the following species, as required by the species election, with traverse, as discussed above:

X is NR;

R is H;

R' is a substituted organic residue, species elected: $\text{CH}(\text{CH}_3)\text{C}(\text{O})\text{OH}$.

An election of "n" is moot since R has been elected as hydrogen; thus, no "n" is present in the elected species. Claims 1 and 4-7 are generic to the elected species. Upon the allowance of a generic claim, Applicants are entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

Respectfully submitted,

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I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 10, 2005

Jennie Sned
(Typed Name of Person Signing Certificate)

Jennie Sned
(Signature of Person Signing Certificate)

Date of Signing: November 10, 2005